IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7352 OF 2004

Shri Pankaj Mantri ..Petitioner

Vs.

Shri B.Y. Pagare, Authorised Officer & Assistant Registrar, Co-operative Socieites, Nandgaon Taluka Nandgaon Dist. Nasik and ors. ..Respondents

Mr. R.N. Sanghvi for petitioner.
Mr. A.H. Palekar, AGP for respondent nos.1,12 and 13.
Mr. Y.R. Naik for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : July 19, 2006.

P.C.:

1. Heard Mr. Sanghvi the learned counsel for the petitioner who has brought in question the order dated 5/6/2004 passed by the Secretary (Co-operation and Marketing), Maharashtra State and by the said order the Revision Application filed under Section 154 of the Maharashtra Co-operative Societies Act, 1960 came to be rejected. The Assistant Registrar of Co-operative Societies, Nandgaon, District Nashik had

passed an order on 3/2/2003 fixing financial liability against the petitioner pursuant to an inquiry conducted under Section 88(1) of the said Act and that order was challenged in an appeal under Section 152 of the Act before the Divisional Joint Registrar who was pleased to dismiss the appeal on 31/12/2003. Though the petitioner has not stated, it is obvious that this petition is filed under Article 227 of the Constitution and has been waiting for admission for the last about two years and may be on account of the law's delays.

2. H.A.L. (Nashik Division) Employees Co-op. Credit Society Ltd. is a credit co-op. society registered under the Act and in the elections held in May 1996 it elected 13 directors so as to form its Managing Committee and one expert director was co-opted subsequently. As it happens in large number of Co-operative societies, there were two groups in the Managing Committee and the first group was allegedly headed by Shri Bhausaheb N. Bankar and the other group was headed by Shri B.G. Khandelwal. A circular resolution was taken out on 8/12/2000 under

the signature of its Vice Chairman Shri P.P. Jopale proposing to transfer the fixed deposits from the State Bank of India, Ozar Township Branch to some other Co-operative Bank, namely, Nasik District Central Co-op. Bank, Nasik Merchants' Co-op. Bank, Janlaxmi Co-op. Bank, Business Co-op. Bank and Jawahar Co-op. Urban Bank Ltd. etc. and this proposal was moved allegedly on the ground that as per the decision of the Supreme Court the interest earned on fixed deposits with the Nationalised Bank was taxable whereas if such deposits was invested with the Co-operative Banks, the interest would not be taxable. This resolution was signed by seven other members of the Managing Committee representing the Bankar group whereas six Managing Committee members representing the Khandelwal group did not sign this resolution. In the next meeting held on 8/1/2001 this resolution was not a subject matter for confirmation or for discussion and surprisingly between the period from 11/12/2000 to 4/4/2001 an amount of Rs.2.20 crores was invested with the Jawahar Co-Op. Urban Bank Ltd. at Hyderabad by way of fixed deposit purportedly on the basis of the circular resolution dated 8/12/2000 and

in the total disregard and in violation of the circular issued by the Reserve Bank of India on 20/7/2000 which was a moratorium order to Jawahar Co-Op. Urban Bank Ltd. restraining it to accept any fixed deposit. It appears from the record that on 13/11/2000 the RBI had already issued a show-cause notice to Jawahar Co.Op. Urban Bank to explain as to why its Banking licence should not be cancelled and this was further continued by way of inquiry and ultimately the Banking licence was cancelled on 14/5/2002. The Bank filed a Writ Petition No.21039 of 2002 before the Andhra Pradesh High Court and in the said Writ Petition the Deputy General Manager of RBI filed his counter affidavit and pointed out that the Bank had fraudulently resorted to mobilization of deposits of Rs.2.20 crores from the society.

3. In the meanwhile, the audit reports for the year 2000-01 of the society were available under Section 81 of the Act and, therefore, the District Deputy Registrar, Co-Op. Societies passed an order on 17/8/2002 directing an inquiry under Section 88(1) and appointed respondent no.1 as the Inquiry

Officer/Authorised Officer. The Inquiry Officer submitted his report on 3/2/2003 and fixed the liability. The petitioner's name appears at Sr. No.10 and fixed the liability of 10% damages to be recovered from the petitioner. In terms of the amount to be recovered from the petitioner by way of 10% liability, it came to Rs.21 lacs and an amount of Rs.3000/- has been directed to be recovered from the petitioner towards the expenses in conducting the inquiry.

4. As noted earlier this order was challenged before the Divisional Joint Registrar in an appeal under Section 152 and subsequently before the State Government in Revision Application under Section 154 of the Act, but both the authorities have concurrently upheld the order passed by the respondent no.1 fixing the liability against the members of the Managing Committed and the present petitioner.

5. Mr. Sanghvi the learned counsel for the petitioner submitted that the petitioner was in no way connected with the society or the Bank and, therefore,

he was a total alien to the transaction of fixed deposit amounting to Rs.2.20 crores kept by the society with the Bank. There was no evidence to show that at any point of time the petitioner had approached the society and canvassed for deposits to be invested with the Bank and, therefore, in the inquiry carried out under Section 88 of the Act, it was not permissible for the respondent no.1 to fix any liability against the petitioner, contended the learned counsel. It must be noted that petitioner has impleaded the society as respondent no.2 but has not impleaded the Bank.

5A. Section 88(1) of the Act provides, inter alia, that on the receipt of the audit report under Section 81 when the Registrar is satisfied that any person who has taken any part in the organisation or management of the society within a period of five years prior to the date of such report or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person and after giving the reasonable opportunity to the

person concerned make an order requiring him to repay the money with interest at such rates as the Registrar or the person authorised under this Section may determine by way of compensation. The authorities below have recorded a finding that the petitioner induced the directors of the society to pass the subject resolution by circulation and divert an amount of Rs.2.20 crores and invest in the Bank. At the same time the interest rate intimated by the Bank while inviting such deposits was 16% p.a. but the deposit was made at the interest rate of 14% p.a. In addition, the petitioner himself has been held to be a beneficiary of the deposit invested by the society with the Bank by sanction of OD advance of Rs.60/- lacs which he did not repay as intimated by the liquidator. The authorised officer had issued show-cause notice to the petitioner, he was called upon to appear before him and he was also given copies of the documents demanded on 7/12/2002. He failed to submit any reply to the show-cause notice and even on the next date i.e. on 11/12/2002 when the hearing was fixed by the authorised officer, the petitioner did not remain present for the said hearing. Under these

circumstances, the authorised officer proceeded against the petitioner on the basis of the audit report. It is more than clear that the petitioner who has acted as a liaison between the directors who passed the resolution by circulation on 8/12/2000 and invested an amount of Rs.2.20 crores with the Bank. This role played by the petitioner certainly falls within the ambit of Section 88 of the Act and, therefore, the petitioner is liable to compensate for the damages suffered by the society but in proportion.

6. In the order passed by the Revisional Authority and impugned in this petition, it is noted that on going through the record the petitioner's involvement is traced through the letter No.JCUB/2000/12/153 in the year 2000 and the liquidator of Jawahar Bank also addressed a letter dated 29/3/2004 and informed that the petitioner who is the resident of Pune was advanced an over-draft loan of Rs.60 lacs against the very same transaction of fixed deposit from the society to the Bank and the load was yet to be repaid. The liquidator had already

taken legal action and an award under Section 71 of the Andhra Pradesh Cooperative Societies Act was passed for recovery. The award is pending for execution. This clearly established that it was the petitioner who had introduced the society by approaching it to invest in fixed deposit and the eight members of the Managing Committee had purportedly passed resolution by circulation on 8/12/2000 at the behest or as a result of the canvassing made by the petitioner. Undoubtedly, the petitioner is beneficiary of the said transaction in as much as he was sanctioned the over-draft loan of Rs.60 lacs which he yet to repay and an award under Section 71 of the Andhra Pradesh Cooperative Societies At was passed against the petitioner. This view taken by the revisional authority cannot be called as perverse or grossly erroneous so as to call for interference in a petition under Article 227 of the Constitution and the recoveries for the damages caused to the Credit Co-Op. Society must proceed further. It appears that these recoveries were not proceeded in view of the pendency of this petition.

7. Mr. Sanghvi the learned counsel for the petitioner has relied upon the decisions of this court in the case of Gajanan Pandurang Shet Parkar vs. Authorised Person of the Registrar of Co-op. Societies, Mapusa and ors. [1998(2) Mh.L.J.483] and Director of Handlooms, Powerlooms and Co-operative Textiles, Nagpur vs. G.S.Rambhad, Chairman and ors. [2000 (2) Mh.L.J 566]. None of these decisions support the case of the petitioner in sustaining the challenge to the impugned order passed under Section 88(1) and duly confirmed by the Appellate and Revisional Authorities under the Act.

8. The petition is, therefore, rejected summarily.

(B.H. Marlapalle,J.)